IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JAMES EDWARD REID,	)	
	)	**Civil Action No. 7:00CV00859**
Petitioner,	)	
	)	
v.	)	**MEMORANDUM OPINION**
	)	
JOHN B. TAYLOR, Warden,	)	
Sussex I State Prison,	)	**By: Samuel G. Wilson**
	)	**Chief United States District Judge**
Respondent.	)	

On October 12, 1996, Annie Lester was brutally murdered in her home in Montgomery County, Virginia. Lester had been bludgeoned with a milk can and a telephone, strangled with a heating pad chord, and stabbed twenty-two times with sewing scissors. Petitioner, James Edward Reid, entered a plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970), in the Circuit Court of Montgomery County to murdering Lester and attempting to rape and rob her. The Circuit Judge sentenced Reid to death. Reid has exhausted his state remedies and brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction and sentence.[1] Reid's petition raises various claims. The heart of several of those claims is Reid's assertion that his counsel did not tell him that an Alford plea was a guilty plea. In fact, when the state trial court asked him how he pled he stated that he pled "Alford." The state court did not afford him an evidentiary hearing on his state habeas petition which raised the claim. Consequently, this court held an evidentiary hearing to determine what Reid's trial counsel told him about the effect of his Alford plea and to determine Reid's understanding about the matter. This court now finds that Reid understood the effect of his plea and finds that he has failed to

[1] Reid named John B. Taylor, Warden, Sussex I State Prison, as Respondent. For ease of reference, the court will refer to Respondent as "the Commonwealth" throughout this opinion.

demonstrate that he is confined or sentenced to death in violation of the United States Constitution. Accordingly, the court dismisses Reid's petition.

I. THE MURDER

In affirming Reid's conviction and sentence on direct appeal, the Supreme Court of Virginia summarized the facts as follows:

> In the afternoon on October 12, 1996, Lester's cousin went to Lester's house, and after finding the front screen door open, entered the house, discovered Lester's body on the floor at the end of a bed, and observed debris all over the bedroom floor. The cousin left and went to a relative's house to call for emergency help, but then returned to Lester's home and was there when the police arrived.
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> Before disturbing the crime scene, the police made a video recording of the inside of Lester's house. The tape was admitted into evidence, and Officer Tommy Lawson narrated what was being seen as the trial court watched it. Blood was present throughout Lester's home on such items as the kitchen floor, the back door and back door trim, the refrigerator, a can of milk, a wig lying on the kitchen floor, the door leading from the kitchen into a television room, scissors lying on a chair in the television room, the bed and headboard in the bedroom where Lester's body was found, the cord of an electric heating pad that was under Lester's head, and the seat of a chair beside her body. Several items of Lester's clothing had blood on them, including a sweater, a slip, and a bra that was still fastened in the back but that "[was] broken in some fashion in the front." The bedroom was in complete disarray with dresser drawers on the floor and bed and clothing strewn all around. A wine bottle was sitting on the floor at the foot of the bed.
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> William Massello, the Assistant Chief Medical Examiner for Western Virginia, performed an autopsy on Lester. He described Lester as an elderly, slender, and "somewhat emaciated" female. During the autopsy, Massello observed 14 stab wounds to the front of Lester's neck and three stab wounds to her chin, one of which went into the jugular vein on the left side of her neck. There were also five stab wounds to the front of Lester's chest. Massello testified that several of these wounds went through the chest wall into Lester's left lung and into her heart. In Massello's opinion, the most rapidly lethal wounds were four of the stab wounds to the chest, which caused bleeding into the chest cavity and, in turn, caused Lester to die rapidly. According to Massello, all the stab wounds had a Z-shaped or H-shaped configuration consistent with injuries caused by two blades superimposed on one another or scissors blades.

In addition to the stab wounds, Massello observed multiple lacerations and bruises on Lester's body. Some of these injuries on the top of Lester's head and face were caused either by Lester's head being struck with a blunt instrument, or by her head striking another object such as a door or wall. Lester had lacerations on the right and left sides of her face and linear crush marks on the right side of her face. Finally, Lester sustained a fracture of the hyoid bone, resulting either from the force of strangulation or from being struck in that area with an object.

The evidence linking Reid to the commission of these crimes consists, in part, of testimony from witnesses who saw Reid at or in the vicinity of Lester's house on the day of her murder. Around 10:30 a.m. on October 12, Reid secured a ride to Lester's house with Haywood Alexander and Robert Smith. Reid's stated purpose for going to Lester's house was to do some work there. En route to Lester's home, Reid asked Alexander and Smith to stop at a store where Reid purchased a bottle of wine. They then proceeded to Lester's house, and upon arriving there, Reid exited the vehicle and walked around to the back of the house with his bottle of wine. Alexander and Smith then left.

Around 4:30 p.m. on that same day, George Eanes, who worked at Eanes Body Shop located across the street from Lester's house, observed Reid walking across the street from the direction of Lester's house. Reid approached Eanes and asked for a ride. Eanes explained to Reid that he was working on his vehicle and could not give him a ride at that time. When asked at the trial to describe Reid's appearance, Eanes stated that "[Reid] had a lot of blood on him and he was staggering." After seeing the blood on Reid's clothing, Eanes asked Reid how he got in that condition. According to Eanes, Reid responded by referring to a former lover and stating that "he did it for love."

George W. Eanes, father of George Eanes, also saw Reid at the body shop and confirmed that Reid appeared to have been in a fight because he had blood all over him. Eanes' father stated that Reid smelled like a "brewery" but that he, nevertheless, agreed to give Reid a ride home. During that drive, Reid explained to Eanes' father that some person had given him some drugs and that they had gotten into an argument or fight.

The results of forensic tests, fingerprint analyses, and handwriting comparisons also place Reid at Lester's house on the day in question. Forensic tests established that Reid's DNA matched a stain abstracted from a cigarette butt found in Lester's home. A blood stain abstracted from the same cigarette butt was consistent with the DNA profile of Lester and Reid. In addition, the forensic scientist who conducted these tests testified that Lester's DNA was consistent with blood recovered from Reid's jacket. Finally, two of Reid's fingerprints were identified in blood found on the handset of a rotary telephone in Lester's bedroom,

and Reid's handwriting was found on some papers recovered in Lester's house. Reid v. Commonwealth, 256 Va. 561, 564-66, 506 S.E.2d 787, 789-90 (1998), cert. denied, 528 U.S. 833 (1999) (footnotes omitted).

II. PROCEDURAL HISTORY

A. State Proceedings

Reid was arrested on October 12, 1996, and charged with (1) the capital murder of Lester during the commission of attempted rape and/or attempted robbery in violation of Va. Code § 18.2-31; (2) attempted rape in violation of Va. Code § 18.2-67.5; and (3) attempted robbery in violation of Va. Code § 18.2-58. Judge Ray W. Grubbs of the Circuit Court of Montgomery County appointed Peter A. Theodore and Robert M. Jenkins to represent Reid. On December 3, 1997, Reid entered Alford pleas to all three charges. See North Carolina v. Alford, 400 U.S. 25, 37-38 (1970) (permitting a court to accept a guilty plea where a factual basis for the plea exists, but the defendant asserts his or her innocence). On December 4, 1997, the trial court found him guilty of the charges in accordance with his pleas. In a separate sentencing proceeding on February 20, 1998, the trial court imposed a sentence of death for the capital murder conviction and two ten-year prison sentences for the attempted rape and attempted robbery convictions. Reid, through trial counsel, appealed his sentence of death to the Supreme Court of Virginia. On November 6, 1998, the Supreme Court of Virginia affirmed the trial court's decision. Reid v. Commonwealth, 256 Va. 561, 506 S.E.2d 787 (1998). The United States Supreme Court denied Reid's petition for writ of certiorari on October 4, 1999. Reid v. Virginia, 528 U.S. 833 (1999).

On December 17, 1998, pursuant to Virginia Code § 19.2-163.7, the Circuit Court appointed two attorneys, James C. Turk, Jr., and Frederick M. Kellerman, Jr., to represent Reid in

state habeas corpus proceedings. Thereafter, Reid filed a petition for a writ of habeas corpus in the Supreme Court of Virginia on December 3, 1999. The Supreme Court of Virginia dismissed that petition on April 6, 2000, and denied Reid's petition for rehearing on June 9, 2000. On June 21, 2000, pursuant to Virginia Code § 53.1-232.1, the Circuit Court of Montgomery County scheduled Reid's execution for August 10, 2000.

B. Federal Proceedings

This court stayed Reid's execution pending consideration of a federal habeas petition. In addition, the court granted Reid's motion to appoint James C. Turk, Jr., and Marie F. Donnelly as his counsel in this action. On November 6, 2000, Reid filed his petition for a writ of habeas corpus in this court. Reid's petition sets forth the following claims as grounds for federal habeas relief:

I. Reid was denied his right to the effective assistance of counsel at trial, in that his trial counsel:

   A. Failed to consider and advise Reid concerning a defense of voluntary intoxication;

   B. Failed to consider and advise Reid concerning an insanity defense;

   C. Failed to advise Reid concerning the consequences of an Alford plea; and

   D. Failed to ensure that Reid's Alford pleas were knowing, voluntary, and intelligent;

II. Reid's Alford pleas were not entered knowingly, voluntarily, and intelligently;

   A. The trial court failed to inquire into Reid's multiple medical and psychiatric conditions; and

   B. The trial court did not inquire adequately into Reid's understanding of the charges against him and the consequences of his Alford pleas;

III. The trial court failed to consider mitigating evidence in violation of Reid's right to a fair and reliable sentencing proceeding.

All of Reid's claims either are exhausted within the meaning of 28 U.S.C. § 2254(b) because he presented them to the Supreme Court of Virginia on direct appeal or state habeas review, or are defaulted because he never presented them to the Supreme Court of Virginia and could not present them to that court now. See Va. Code §§ 8.01-654(B)(2) (prohibiting successive habeas petitions generally); 8.01-654.1 (limiting death row inmates to one habeas petition filed no later than sixty days after denial of certiorari on direct appeal).

On April 12, 2001, the court heard arguments on the Commonwealth's motion to dismiss the petition. After hearing the arguments, the court determined that an evidentiary hearing was necessary because it was not clear from the record what Reid's trial counsel told him about the effects of his Alford pleas, and what Reid understood about the effects of those pleas. The court held the evidentiary hearing to determine those facts on November 14, 2001.

III. STANDARD OF REVIEW

"The Antiterrorism and Effective Death Penalty Act of 1996 modified a federal habeas court's role in reviewing state prisoner applications in order to prevent federal habeas 'retrials' and to ensure that state-court convictions are given effect to the extent possible under law." Bell v. Cone, 122 S. Ct. 1843, 1849 (2002). Under the Act (the "AEDPA"), which amends 28 U.S.C. § 2254, a federal court may not grant an application for habeas relief on a claim that was adjudicated on the merits in state court unless that adjudication: "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," § 2254(d)(1), or "resulted in a decision

that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," § 2254(d)(2).

As the Supreme Court has made plain, § 2254(d)(1)'s "contrary to" and "unreasonable application" clauses have independent meaning. A decision is "contrary to" clearly established federal law if the state court applies a rule that conflicts with Supreme Court precedent or "confronts a set of facts that are materially indistinguishable from a decision of [the Supreme Court] and nevertheless arrives at a [different] result . . . ." Williams v. Taylor, 529 U.S. 362, 406 (2000).[2] A decision involves an "unreasonable application" of clearly established federal law if the state court identifies the correct governing legal principle from the Supreme Court's decisions but unreasonably applies that principle to the facts of the prisoner's case. Id. at 413. A federal court may not grant habeas relief under the "unreasonable application" clause simply because it independently determines that the state court erroneously or incorrectly applied clearly established federal law. Id. at 411. Rather, that application also must be objectively unreasonable. Id.

Although the Supreme Court of Virginia did not articulate its rationale for rejecting Reid's state habeas claims, the claims still must be considered "adjudicated on the merits" and, therefore, the standard of review set forth in § 2254(d) is applicable.[3] This court may not "'presume that

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[2] On April 18, 2000, the Supreme Court issued two separate AEDPA opinions in which the petitioners had the same surname. Both cases originated in the Commonwealth of Virginia. Terry Williams v. Taylor, 529 U.S. 362 (2000), involves § 2254(d)(1); Michael Williams v. Taylor, 529 U.S. 420 (2000), involves § 2254(e)(2). Michael Williams v. Taylor is relevant to the court's evidentiary hearing. Terry Williams v. Taylor is relevant to the standard of review and the analysis of Reid's claims.

[3] The standard of review provided by § 2254(d) does not apply where a state court has not adjudicated a habeas petitioner's constitutional claim on the merits. Instead, as the Court of

[the] summary order is indicative of a cursory or haphazard review of [the] petitioner's claims.'" Bell v. Jarvis, 236 F.3d 149, 158 (4th Cir. 2000) (quoting Wright v. Angelone, 151 F.3d 151, 157 (4th Cir. 1998)). Therefore, the Supreme Court of Virginia's summary order constitutes an adjudication on the merits of Reid's ineffective assistance of counsel claims and must be reviewed by the court under the deferential provisions of § 2254(d)(1). See id. (citing Wright, 151 F.3d at 156-57).

Because the Supreme Court of Virginia failed to disclose its reasoning, however, this court must conduct an independent review of the record and the applicable law.[4] Bell, 236 F.3d at 163; Bacon v. Lee, 225 F.3d 470, 478 (4th Cir. 2000). In doing so, the court still must confine its review to whether the state court's adjudication of Reid's ineffective assistance of counsel claims "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1); Bell, 236 F.3d at 158.

Section 2254(d)(2) requires no less deference to the state court's factual determinations. A federal court is not at liberty to redetermine the facts. The state court's factual determinations constrain the federal habeas court unless those factual determinations are objectively unreasonable

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Appeals for the Fourth Circuit has noted, "[w]hen a petitioner has properly presented a claim to the state court but the state court has not adjudicated the claim on the merits, . . . our review of questions of law and mixed questions of law and fact is *de novo*." Weeks v. Angelone, 176 F.3d 249, 258 (4th Cir. 1999), aff'd, 528 U.S. 225 (2000).

[4] The court notes that this independent review differs from *de novo* review of the petitioner's claims and from a requirement that the court make an independent determination on the merits of those claims. Bell, 236 F.3d at 163. Thus, the court need not independently determine whether the petitioner's constitutional rights were violated before determining whether the state court's decision was reasonable. Id.

based on the evidence before the state court. At all stages in federal habeas proceedings the state court's factual determinations are presumed to be correct. The petitioner carries the burden of proving by clear and convincing evidence that those determinations are objectively unreasonable. See § 2254(e)(1). The AEDPA evinces clear congressional intent that federal courts avoid unnecessary evidentiary hearings in habeas cases. Williams v. Taylor, 529 U.S. 420, 436 (2000). To that end, § 2254(e)(2) limits a federal court's authority to conduct evidentiary hearings. Under that section, a district court may not grant an evidentiary hearing if the petitioner "has failed to develop the factual basis of a claim in State court proceedings." 28 U.S.C. § 2254(e)(2). The Supreme Court has interpreted this clause to require "a reasonable attempt, in light of the information available at the time . . . to pursue [the claim] in state court." Williams, 529 U.S. at 435.

Even if § 2254(e)(2) does not prohibit an evidentiary hearing, however, "the district court is permitted to hold a hearing only if 'the petitioner alleges additional facts that, if true, would entitle him to relief,'" Fullwood v. Lee, 290 F.3d 663, 681 (4th Cir. 2002), and he is able to satisfy one or more of the six factors the Supreme Court enunciated in Townsend v. Sain, 372 U.S. 293, 312 (1963).[5] If the federal court grants an evidentiary hearing it must ultimately determine whether "the state court's result is legally or factually unreasonable." Bell, 236 F.3d at 163 (quoting Aycox v. Lytle, 196 F.3d 1174, 1178 (10th Cir. 1999)) (emphasis added); see also

[5] The Townsend factors are: (1) the merits of the factual dispute were not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state court hearing; or (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing. Townsend, 372 U.S. at 312; see also Fullwood, 290 F.3d at 681.

Harris v. Stovall, 212 F.3d 940, 943 (6th Cir. 2000) ("Where a state court decides a constitutional issue by form order or without extended discussion, a habeas court should then focus on the result of the state court's decision. . . .") (emphasis added).

With those precepts in mind the court granted Reid an evidentiary hearing. The court concluded that Reid had diligently pursued in state court his pivotal claim that trial counsel did not explain properly the effects of an Alford plea. Reid clearly raised the claim in his state habeas petition, submitted affidavits that, if credited, would have established the claim, and sought an evidentiary hearing. The Supreme Court of Virginia did not order an evidentiary hearing on any of Reid's claims and issued a summary one-page opinion denying Reid's petition. This court concluded that Reid had satisfied *at least* one of Townsend's six factors because the state court had not afforded Reid an evidentiary hearing. Accordingly, this court held an evidentiary hearing to determine what Reid's trial counsel told him about the effect of his Alford plea and to determine what Reid understood about the effect of that plea.

IV. THE EVIDENTIARY HEARING

At the evidentiary hearing, Reid testified initially that his trial counsel, Peter Theodore and Robert Jenkins, did not explain the possible pleas he could enter, what an Alford plea was, or that he was giving up rights he would have had on a plea of not guilty. (Nov. 14, 2001 Hr'g, Reid's Test. at 7-11, 15-22.) He claimed they told him an Alford plea would save his life; that the "worst thing" that could happen would be a life sentence; "that there was a possibility that the charge would be reduced on an Alford plea;" and that he would be eligible for "geriatric parole" at age 65 or 70 . (Nov. 14, 2001 Hr'g, Reid's Test. at 8-9.) He testified that if he had known what an Alford plea was he never would have entered it. (Id. at 25.) He stated that he would have rather

"told what he knew about the case and let the judge or the jury, or whoever, decide." (Id.)

Reid's testimony on direct and cross was replete with the refrain that he simply was following the advice of his lawyers that an Alford plea was the best plea to enter. When asked why he told the Judge in his plea colloquy that he understood he could receive the death penalty, Reid responded: "Well, because I was listening to what the lawyers said. I mean I was relying on him, put everything in his hands, believed what he was telling me." (Nov. 14, 2001 Hr'g, Reid's Test. at 17.) When asked by habeas counsel whether he was confused, Reid responded: "I can't say–I wasn't confused, but I mean, like I say, I was just–I put my total confidence and trust in the lawyer, Mr. Theodore, and what he told me to do." (Id. at 20.)

Counsel asked the question again and got the same answer:

> Q: Did you understand what was going on, Mr. Reid, or were you confused?
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> A: Well, I can't say that I was confused, but like I say, I was just believing that Mr. Theodore knowed what he was doing and I was just taking his advice.

(Nov. 14, 2001 Hr'g, Reid's Test. at 23.)

When the court asked Reid why, when the judge taking his plea told him that he could get the death penalty, he did not tell the judge that, in fact, he did not think he could get the death penalty, Reid responded: "Maybe I wasn't plain enough, but, still, I was believing what the lawyers had told me . . . . See, I put all my trust and confidence in the lawyers, just believing what they was telling me, that they know what they was doing because they're professionals." (Nov. 14, 2001 Hr'g, Reid's Test. at 35-36.) Respondent's counsel asked Reid about his answers to each of the questions the judge had asked him during his plea colloquy, and Reid continued the refrain that he was relying on counsel. (Id. at 34-36.)

Reid also testified that his lawyers failed to tell him about the evidence the Commonwealth had against him: "They never explained to me nothing about the evidence they had against me or nothing like that. But I knew the evidence was bad because I recall being there, and I know there were things that I had before I went there that was left there." (Nov. 14, 2001 Hr'g, Reid's Test. at 37.)

Later, an exchange between respondent's counsel and Reid disclosed that Reid understood more than he admitted to earlier:

> Q: . . . what I want from you is whether you knew or not that the prosecutor was going to present to the jury all of this evidence about what happened to Ms. Lester, including the fact that she was laying on the floor with her clothes cut off of her, that she had been bludgeoned, that she had been stabbed 22 times with scissors, that she had been strangled, that her bedroom had been ransacked like someone was looking for money, that there was a jar of Vaseline sitting by her body? And the prosecutor was going to tell the jury all of those facts, and you knew that, didn't you?
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> A: Well, yes, ma'am.
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> Q: Okay. And you also knew, didn't you, that if a jury found you guilty, that a jury was also going to decide what sentence to give you, and that the prosecutor could present even more evidence about your criminal background to the jury if you had a jury trial? You knew that didn't you?
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> A: Yes, ma'am, I knew that, but I mean I didn't have nothing to run from or hide from or nothing like that . . . .

(Nov. 14, 2001 Hr'g, Reid's Test. at 40-41.)

Respondent's counsel also questioned Reid about a letter his state court trial counsel, Peter Theodore and Robert Jenkins, sent Reid confirming Reid's decision to enter an Alford plea. According to the letter, Jenkins and Theodore believed that an Alford plea was the best plea to enter. The letter confirmed that, by entering an Alford plea, Reid would lose the right to a jury

trial and the right to appeal his conviction. (Nov. 14, 2001 Hr'g, Reid's Test. at 46.) The letter further stated that Reid's counsel would offer evidence in mitigation "to hopefully avoid a death sentence." Reid acknowledged that he read and signed the letter, but he testified that he "didn't pay too much attention" to it. (Nov. 14, 2001 Hr'g, Reid's Test. at 46-47.)

Finally, Reid acknowledged that after the judge sentenced him to death, Reid did not complain to his attorneys or to the court that he received a sentence that was different from what he was promised. (Nov. 14, 2001 Hr'g, Reid's Test. at 47.)

Petitioner's sister, Ida Reid, testified that she was present on various occasions when counsel spoke with petitioner. In short, she testified that counsel only discussed one plea–an Alford plea–with her brother and that counsel neither explained that an Alford plea is a guilty plea nor that her brother would be surrendering certain rights if he entered an Alford plea. (Nov. 14, 2001 Hr'g, Ida Reid's Test. at 55-64.)

Respondent called Robert Jenkins as a witness. Jenkins testified that the overwhelming evidence against Reid, the chances of receiving the death penalty in a jury trial, and the different types of pleas available were topics "constantly talked about" among Reid and his counsel. (Nov. 14, 2001 Hr'g, Jenkins' Test. at 10.) Jenkins testified that on several occasions counsel "went over with Mr. Reid the different types of pleas that there were: guilty, not guilty, no contest, [and] Alford plea." (Nov. 14, 2001 Hr'g, Jenkins' Test. at 5.) He testified that he told Reid an Alford plea "was a plea where he maintained his innocence but was acknowledging that there was enough evidence . . . [to] be convicted." (Nov. 14, 2001 Hr'g, Jenkins' Test. at 5.) He testified that he did not promise Reid a life sentence if Reid entered an Alford plea, but instead told him that he would either receive a life sentence without possibility of parole or a death sentence.

Jenkins also testified that he explained to Reid that by entering an Alford plea Reid would be found guilty of the offense of capital murder. (Nov. 14, 2001 Hr'g, Jenkins' Test. at 19-20.) Jenkins explained that he specifically told Reid the judge could still sentence Reid to death despite Reid's Alford plea. (Nov. 14, 2001 Hr'g, Jenkins' Test. at 6.)

At the plea hearing, the prosecution chose to put on much of its case. After the prosecution finished presenting its evidence, Jenkins made a motion to strike the charges of attempted rape and attempted robbery. At the evidentiary hearing in this court, Jenkins testified that he made the motion not because he expected it to be granted, but instead because he felt he had "nothing to lose." (Nov. 14, 2001 Hr'g, Jenkins' Test. at 30.) He explained that the presentation of evidence by the prosecution was "a little bit lax" and hoped that the judge would consider during sentencing the points he raised in the motion. Jenkins also testified that he hoped the judge might reduce the charges because of the poor presentation by the prosecution. (Nov. 14, 2001 Hr'g, Jenkins' Test. at 31.) Jenkins believed that the judge had discretion to reduce the charges after an Alford plea was entered. When questioned further, Jenkins could not identify a specific case or statute that grants a judge this discretion.[6] (Nov. 14, 2001 Hr'g, Jenkins' Test. at

[6]Jenkins' belief that a trial judge can reduce a charge after accepting a plea is incorrect, but not wholly unfounded. Before 1976, the law on this issue was unsettled and at least one Supreme Court of Virginia decision suggested that judges did indeed have the power to reduce a charge following a guilty plea. See Smyth v. Morrison, 200 Va. 728, 107 S.E.2d 430 (1959). In Smyth, the trial court reduced a burglary charge in a guilty plea to housebreaking and larceny, a lesser offense. The Supreme Court of Virginia held that "in the exercise of its jurisdiction and power, the trial court properly heard the evidence and, in its discretion found the accused guilty of the offense shown to have been committed by him." Smyth, 200 Va. at 734, 107 S.E.2d at 434-35. But in 1976, the Supreme Court of Virginia decided Kibert v. Virginia, 216 Va. 660, 222 S.E.2d 790, 792 (1976). There, the court held that a defendant who pleads guilty "confesses 'to the highest degree of the offense which the indictment charges and of which he can be convicted under its averments.'" Id. at 664, 222 S.E.2d at 792. Therefore, Jenkins' belief that the judge could strike or reduce Reid's charges after the Alford plea was incorrect.

33.)

In any event, Jenkins testified that he never told Reid that the judge could reduce the charges after Reid entered an Alford plea. (Nov. 14, 2001 Hr'g, Jenkins' Test. at 6.) He also stated that he never told Reid that after the Alford plea the prosecution must still prove Reid's guilt. (Nov. 14, 2001 Hr'g, Jenkins' Test. at 30.) Jenkins testified that, throughout the representation, he told Reid of only two possible sentences that could result from an Alford plea: life imprisonment without parole or the death penalty. (Nov. 14, 2001 Hr'g, Jenkins' Test. at 6.)

V. FINDINGS OF FACT

The court has reviewed the state court trial and habeas records in their entirety and against that backdrop makes findings of fact on the factual questions that were before the court in the evidentiary hearing; specifically, what Reid's counsel told him about the effect of his Alford plea and what Reid understood about the effect of that plea.

The court finds that Reid's trial counsel, Robert Jenkins and Peter Theodore, explained the consequences of Reid's Alford plea to him on numerous occasions. Jenkins never told Reid that by entering the Alford plea he would avoid the death penalty. In fact, he specifically told Reid that the judge could still sentence Reid to death despite Reid's Alford plea. At the time, however, Reid's trial counsel believed the Alford plea presented the best hope for avoiding the death penalty, and they recommended it to Reid. Jenkins also did not tell Reid that the judge could reduce the charges after Reid entered an Alford plea. The court finds that Jenkins only communicated two possible outcomes of the Alford plea to Reid throughout the representation: life imprisonment without parole or death.

Furthermore, before entering the Alford plea, Reid was given a letter by his counsel that

reiterated the consequences of his plea. The letter stated that "we are therefore going to enter an Alford plea and present the evidence on your behalf in mitigation of the offense to hopefully avoid a death penalty." Reid read and signed this letter. Moreover, the entire sentencing proceeding openly revolved around the question of whether the court should sentence Reid to life or death. During closing argument, Reid's counsel pleaded with the court to "spare [Reid's] life and give him life in prison" (Feb. 20, 1998 Sent. Tr. at 365), and when the court sentenced Reid to death Reid said nothing. It is beyond question that Reid would have said something if he had thought he was not subject to the death penalty. In short, Reid's testimony that he was told he would not get the death penalty totally lacks credibility.

Reid's responses during his plea colloquy further support the conclusion that Reid understood the consequences of his plea. In that proceeding, Reid acknowledged that he was waiving his right to a jury trial and his right to confront the witnesses against him; that he was waiving his right to defend himself against the charges; that he was waiving his right to appeal his conviction; and that he would face the same possible punishments as if he had pled guilty. Reid also acknowledged that he understood he faced the death penalty. He stated that he had not been promised a different sentence by anyone.

Based on the testimony at the evidentiary hearing and Reid's statements during his plea hearing, this court finds that Reid was aware of the consequences of his Alford plea at the time he entered it. The court will now review Reid's individual claims in the order Reid presents them in his federal habeas petition. The court will apply its findings from the evidentiary hearing where pertinent.

VI. CLAIM I

In Claim I of his federal habeas petition, Reid contends that he was deprived of his Sixth Amendment right to effective assistance of counsel because his trial counsel: (1) failed to consider and advise him concerning a defense of voluntary intoxication; (2) failed to consider and advise him concerning an insanity defense; (3) failed to advise him concerning the consequences of an Alford plea; and (4) failed to ensure that his Alford pleas were knowing, voluntary, and intelligent. On state habeas, the Supreme Court of Virginia held that the claims had no merit. The court finds that the Supreme Court Virginia's adjudication was neither contrary to nor involved an unreasonable application of federal law.

Under § 2254(d)(1), the court must first identify the clearly established federal law, as determined by the Supreme Court, that governs ineffective assistance of counsel claims. Those claims are governed by the familiar two-part test established in Strickland v. Washington, 466 U.S. 668 (1984). Under that test, the petitioner must show that his or her counsel's performance fell below an objective standard of reasonableness. Id. at 686; see also Wright v. Angelone, 151 F.3d 151, 161 (4th Cir. 1998) (noting strong presumption that counsel's performance was within the wide range of professional competence). In addition, the petitioner must establish prejudice by showing a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 694. A reasonable probability is one "sufficient to undermine confidence in the outcome." Id.

The applicable test for reviewing an ineffective assistance of counsel claim in the context of a guilty plea is set forth in Hill v. Lockhart, 474 U.S. 52 (1985), and is slightly different from the test set forth in Strickland. The primary difference is under the prejudice prong of the analysis. As stated, under Strickland, the defendant establishes prejudice if there is a reasonable

probability that, but for the alleged ineffective assistance, the result of the proceeding would have been different. Strickland, 466 U.S. at 694. To establish prejudice under Hill, the defendant must show that there is a reasonable probability that, but for the alleged ineffective assistance, the defendant would have insisted on going to trial instead of pleading guilty. Burket v. Angelone, 208 F.3d 172, 189 (4th Cir. 2000) (citing Hill, 474 U.S. at 59). Although the Hill modification focuses the inquiry on a subjective question, the answer to that question must be reached through an objective analysis. Hooper v. Garraghty, 845 F.2d 471, 475 (4th Cir. 1988).

Before addressing Reid's ineffective assistance of counsel claims individually, the court first addresses Reid's general argument that the Supreme Court of Virginia's adjudication of Reid's ineffective assistance claims resulted in a decision that was contrary to clearly established federal law. In support of that argument, Reid notes that, in issuing its decision, the Supreme Court of Virginia failed to indicate what clearly established federal law it applied in finding that Reid's ineffective assistance claims lacked merit. Reid maintains that the court should presume that the Supreme Court of Virginia relied on its analysis in Williams v. Warden, 254 Va. 16, 487 S.E.2d 194 (1997). That decision held that the Supreme Court's decision in Lockhart v. Fretwell, 506 U.S. 364 (1993), toughened the test for ineffective assistance of counsel claims. Williams, 254 Va. at 23-26, 487 S.E.2d at 198-99. On federal habeas review, in Williams v. Taylor, 529 U.S. 362 (2000), the Supreme Court later rejected the Supreme Court of Virginia's interpretation of Lockhart and adhered to the test established in Strickland. Accordingly, Reid argues, because the Supreme Court of Virginia decided this case before the Supreme Court decided Williams v. Taylor, the court should presume that the Supreme Court of Virginia applied the incorrect legal standard in adjudicating his ineffective assistance claims and, therefore, find that the state court's

adjudication was contrary to clearly established Supreme Court precedent.

The court rejects Reid's argument. In effect, Reid asks the court to presume that the Supreme Court of Virginia applied the incorrect legal standard in adjudicating his ineffective assistance of counsel claims despite there being no indication that it did. Unlike its decision in Williams, the Supreme Court of Virginia said nothing about Lockhart toughening the ineffective assistance standard. Thus, there is no indication that the Supreme Court of Virginia's decision in Reid's case contains the same error that the Supreme Court found in the Supreme Court of Virginia's decision in Williams. A presumption that a state court applied the wrong law, in the absence of some indication that it did so, clearly would conflict with principles of federalism woven in the fabric of § 2254.

The court now reviews each of Reid's ineffective assistance claims in turn. To obtain relief on those claims, Reid must show that the Supreme Court of Virginia's adjudication resulted in a decision that was contrary to, or involved an unreasonable application of, the Supreme Court's decision in Strickland and Hill–i.e., the clearly established federal law, as determined by the Supreme Court, for reviewing ineffective assistance of counsel claims in the context of a guilty plea.

A. Claim I(A)

Reid maintains that he was denied the effective assistance of counsel because his attorneys failed to consider and advise him concerning a defense of voluntary intoxication. On state habeas, the Supreme Court of Virginia held that the claim had no merit.[7] Having independently reviewed the record and the applicable law, the court concludes that the Supreme Court of Virginia was not

[7] Claim I(A) corresponds to Claim VII(C)(7) of Reid's state habeas petition.

unreasonable in rejecting the claim.

Reid alleges that he was involved in an automobile accident in 1968 that left him in a coma for at least five days and that caused brain damage. Reid then developed a seizure disorder that progressively caused more damage. Because of his brain damage, Reid alleges he is more susceptible to the effects of alcohol and experiences blackout periods when he is intoxicated. In addition, Reid has a family history of alcoholism, has abused alcohol since age fifteen, and has had numerous admissions to both psychiatric hospitals and alcohol abuse rehabilitation centers. Because of Reid's brain damage, seizure disorder, and history of alcoholism, Reid's experts opined that intoxication could affect Reid's ability to premeditate or deliberate and could cause Reid to experience blackout periods during which he engages in violent outbursts and aggressive behavior. Since his arrest, Reid has claimed that he remembers being at Lester's house prior to the offense but does not recall anything that transpired there.[8] According to Reid, Reid's experts, who also testified at sentencing, support his contention that he had a blackout on the day of the murder because of alcohol consumption and their experts opinions also demonstrate that a defense of voluntary intoxication would have been a viable defense.[9]

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[8] It should be noted that, although the evidentiary hearing was limited to determining Reid's understanding of his Alford plea, Reid testified that he does recall at least some of the events of that night. When asked about the evidence that the Commonwealth would have presented, Reid stated: ". . . I knew the evidence was bad because I recall being there, and I know there were things that I had before I went there that was left there." (Nov. 14, 2001 Hr'g, Reid's Test. at 37.)

[9] Much of this expert testimony regarding the voluntary intoxication defense may not have been admissible. Intoxication does not ordinarily require expert testimony, and testimony about medical or psychiatric conditions that made Reid unable to formulate the necessary criminal intent are more akin to a defense of diminished capacity–a defense not recognized in Virginia courts. Stamper v. Virginia, 228 Va. 707, 716-717, 324 S.E.2d 682, 688 (1985).

Reid contends trial counsel did not research the defense or wait for the experts' reports before recommending that he enter Alford pleas, and if they had they would have recognized that voluntary intoxication was a viable defense. Reid maintains that if he had known of the defense he would have insisted on going to trial instead of pleading guilty. In contrast, Reid's trial counsel contend that they understood that voluntary intoxication could constitute a defense to premeditation but that they thought it had little or no chance of success in Reid's case, and they explained that to him. Assuming, without deciding, that Reid's account of trial counsel's performance is accurate and that counsel's representation falls below an objective standard of reasonableness–thus satisfying the performance prong of the Strickland-Hill test–Reid still is not entitled to habeas relief because the court cannot conclude that the Supreme Court of Virginia unreasonably rejected Reid's claim under the prejudice prong of the Strickland-Hill test.

Voluntary intoxication may constitute a defense to capital murder in Virginia if the defendant's intoxication was so complete as to render him or her unable to deliberate or premeditate. Savino v. Murray, 82 F.3d 593, 601 (4th Cir. 1996); Essex v. Virginia, 228 Va. 273, 282, 322 S.E.2d 216, 220 (1984). Mere intoxication, however, does not negate premeditation. Giarratano v. Virginia, 220 Va. 1064, 1073, 266 S.E.2d 94, 99 (1980). Rather, to establish an intoxication defense, the defendant must prove that the intoxication was so complete as to render the defendant unable to deliberate or premeditate. Savino, 82 F.3d at 601; Essex, 228 Va. at 282, 322 S.E.2d at 220. Even if there is evidence of extreme intoxication, the fact finder may find deliberation and premeditation if there is proof that the defendant was "in full control of his faculties and knew exactly what he intended to do." See Fitzgerald v. Virginia, 223 Va. 615, 631, 292 S.E.2d 798, 807 (1982).

Reid's argument, that had he known of the defense of voluntary intoxication he would have insisted on going to trial, misses the mark. As stated, the Strickland-Hill analysis is an objective not a subjective analysis. Hooper v. Garraghty, 845 F.2d 471, 475 (4th Cir. 1988). To establish prejudice under Hill, Reid much show that there is a reasonable probability that, but for the alleged ineffective assistance, a reasonable defendant in Reid's position would have insisted on going to trial with a defense of voluntary intoxication instead of pleading guilty.

Here, although there is evidence of intoxication, there is overwhelming evidence of deliberation and premeditation. Before the day of the murder, Reid made statements that he wanted to "kill all the black women in Christiansburg." Shortly before the murder, Reid wrote "I've gotta kill you" on a card at Lester's house, and the facts of the offense clearly demonstrate deliberation and premeditation. Reid stabbed Lester twenty-two times with sewing scissors; bludgeoned Lester with a milk can and a telephone; strangled Lester with a heating pad chord; dragged Lester's body from the kitchen into the bedroom; removed Lester's clothes; used Vaseline in an apparent sexual attempt; took the time to smoke cigarettes and telephone his girlfriend; and ransacked Lester's bedroom.

Simply put, Reid's actions seriously undermine a voluntary intoxication defense. The question, in light of that reality, is whether the Supreme Court of Virginia could have concluded reasonably that a reasonable defendant in Reid's position would have entered an Alford plea rather than going to trial. This court has no hesitancy in finding that the Supreme Court of Virginia could have reasonably so concluded. Accordingly, the court concludes that the Supreme Court of Virginia's adjudication was neither contrary to nor an unreasonable application of federal law.

Although this court's conclusion from its objective analysis resolves the issue, the court notes that even if this court applied the subjective analysis Reid suggests–that *he* would have insisted ongoing at trial–the conclusion would be the same. It is abundantly clear, from the evidentiary hearing, that Reid would have entered an Alford plea. As Reid stated, he "knew the evidence was bad because [he] recall[ed] being there." (Nov. 14, 2001 Hr'g, Reid Test.at 37.) That knowledge coupled with Reid's constant refrain at the evidentiary hearing that he simply was following the advice of his counsel, makes it clear that Reid would have followed counsel's advice to enter an Alford plea–advice which this court incidentally finds to be objectively reasonable.

In sum, the court concludes that the Supreme Court of Virginia's adjudication of Reid's claim was neither contrary to nor an unreasonable application of the governing Strickland-Hill test. Consequently, Reid is not entitled to habeas relief on this claim.

B. Claim I(B)

Reid also contends that he was denied the effective assistance of counsel because his counsel failed to consider and advise him of an insanity defense. Specifically, Reid maintains that trial counsel's representation was deficient because counsel allegedly failed to conduct an adequate factual and legal investigation of an insanity defense and failed to provide him with competent advice regarding the availability of an insanity defense before recommending that he enter Alford pleas. Had trial counsel done so, Reid argues, he would have insisted on going to trial with an insanity defense instead of pleading guilty. On state habeas, the Supreme Court of Virginia held that the claim had no merit.[10] Having independently reviewed the record and the applicable law, the court concludes that the Supreme Court of Virginia was not unreasonable in

[10] Claim I(B) corresponds to Claim VII(A) of Reid's state habeas petition.

rejecting Reid's claim.

Virginia law recognizes two tests by which an accused can establish insanity–the M'Naghten test and the irresistible impulse test. Under the M'Naghten test, the defendant must demonstrate that, at the time of the offense, he or she "was labouring [sic] under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong." Price v. Commonwealth, 228 Va. 452, 457-58, 323 S.E.2d 106, 109 (1984). Both facets of the M'Naghten test require a showing of a disease of the mind. See Johnson v. Insurance Co. of N. Am., 232 Va. 340, 347, 350 S.E.2d 616, 620 (1986). The irresistible impulse defense is available when the defendant's "'mind has become so impaired by disease that he is totally deprived of the mental power to control or restrain his act.'" Vann v. Commonwealth, 35 Va. App. 304, 313, 544 S.E.2d 879, 883 (2001) (quoting Bennett v. Commonwealth, 29 Va. App. 261, 277, 511 S.E.2d 439, 447 (1999)). To prove irresistible impulse, the defendant must show that "although understanding his or her actions, the defendant was unable, due to a disease of the mind, to control or restrain these actions." Herbin v. Commonwealth, 28 Va. App. 173, 182, 503 S.E.2d 226, 231 (1998) (citing Thompson v. Commonwealth, 193 Va. 704, 718, 70 S.E.2d 284, 292 (1952)). Accordingly, both the M'Naghten test and the irresistible impulse test require a showing of a disease of the mind.

Here, Drs. Stephen M. Herrick and J. Randy Thomas evaluated Reid to determine his sanity at the time of the offense. Although they opined that Reid had a "mental defect," they also opined that "there was insufficient evidence to conclude that[,] because of his mental defect[,] the defendant could not understand the nature, character, and consequences of his actions or could not distinguish right from wrong, or was substantially unable to resist an impulse to commit the

act." (Resp't Ex. 1, Attach. 3 at 3.) The lack of evidence was not due to trial counsel's failure to investigate, but rather because of Reid's alleged lack of memory of the events surrounding the offense and the lack of any witnesses to the offense. (Resp't Ex. 1, Attach. 3 at 3.) Dr. Pogos H. Voskanian also evaluated Reid's mental condition at the time of the offense. He opined that the combined effects of Reid's medical and psychiatric conditions "exacerbated by an acutely intoxicated state is highly likely to have a devastating effect on one's judgment, appreciation of reality, ability to resist impulses, ability to form rational decisions and perform intentional acts." (Pet'r Ex. A at 14.) However, Voskanian did not state that he believed Reid was insane at the time of the offense. Consequently, at the time of trial, Reid's experts were unable to support an insanity defense under either the irresistible impulse test or the M'Naghten test.

Given the circumstances of the offense and the lack of expert support for an insanity defense at the time of trial, the Supreme Court of Virginia could have reasonably concluded that trial counsel's decision not to pursue an insanity defense at trial did not fall below an objective standard of reasonableness. Thus, the court cannot conclude that the Supreme Court of Virginia's adjudication of Reid's claim constituted an unreasonable application of Strickland's performance prong. Consequently, Reid is not entitled to habeas relief on the claim.

C. Claim I(C)

Reid contends that he was denied the effective assistance of counsel because his attorneys failed to advise him of the consequences of an Alford plea. Essentially, Reid maintains that trial counsel advised him that an Alford plea did not have the same effect as a guilty plea and that entering an Alford plea was the only way for him to avoid a death sentence. On state habeas, the

Supreme Court of Virginia held that the claim had no merit.[11]

This court rejected the claim's factual predicate in its findings of fact. The court found instead that Reid's trial counsel advised him of the consequences of his Alford pleas and that Reid understood those consequences.[12] Therefore, the court finds that the Supreme Court of Virginia could have reasonably determined that Reid's counsel satisfied the objective standard of reasonableness under Strickland's performance prong as to this claim.

Furthermore, regardless of the outcome of the performance analysis, Reid has not satisfied Hill's prejudice prong because he failed to show that there is a reasonable probability that a reasonable defendant in Reid's position would have insisted on going to trial instead of pleading guilty had he understood the consequences of an Alford plea. Although there was overwhelming evidence of Reid's guilt, Reid claimed he could not remember committing the crime. Thus, Reid's situation was precarious: there was a high probability that a jury trial would result in a conviction and sentence of death, but Reid could neither admit nor deny that he killed Annie Lester because

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[11] Claim I(C) corresponds to Claim VII(C)(9) of Reid's state habeas petition.

[12] Reid argues that his trial counsel did not advise him that an Alford plea had the same effects as a guilty plea. However, Jenkins testified that he told Reid by entering an Alford plea he would be found guilty of a capital offense. Furthermore, the letter Reid signed from his counsel indicated that an Alford plea carried the same consequences as a guilty plea. Reid also acknowledged during the plea colloquy that he understood he was waiving his right to defend himself against the charges; that he was waiving his right to a jury trial and to confront the witnesses against him; that he was waiving his right to appeal his conviction; and that he could still face the death penalty even after entering his plea. This demonstrates that Reid was aware his Alford plea carried with it the same consequences as a guilty plea, regardless of whether he understood that the two pleas were, in fact, the same. Indeed, the Supreme Court in Alford said: "the fact that [defendant's] plea was denominated a plea of guilty rather than a plea of nolo contendere is of no constitutional significance with respect to the issue before us, for the Constitution is concerned with the practical consequences, not the formal categorizations, of state law." Alford, 400 U.S. at 37 (emphasis added).

he claimed to remember nothing. Under the circumstances, an Alford plea was not only appropriate but arguably the most prudent course of action. See North Carolina v. Alford, 400 U.S. 25, 37 (1970) ("Because of the overwhelming evidence against him, a trial was precisely what neither [the defendant] nor his attorney desired"). By pleading guilty under Alford, Reid afforded himself a reasonable chance of avoiding the death penalty by leaving the decision entirely with the judge. His decision remains an objectively reasonable one. It follows that he cannot show that a reasonable defendant in his position would have insisted on going to trial instead of entering an Alford plea. Therefore, the Supreme Court of Virginia could have reasonably concluded that, in addition to not satisfying Strickland's performance prong, Reid failed to satisfy its prejudice prong as well. Accordingly, the court concludes that the Supreme Court of Virginia's adjudication of Reid's claim was neither contrary to nor an unreasonable application of the governing Strickland-Hill test.

D. Claim I(D)

Reid maintains that he was denied the effective assistance of counsel because his attorneys failed to ensure that his Alford pleas were knowing, voluntary, and intelligent. First, Reid asserts that trial counsel's failure to advise Reid properly of the elements of the charged offenses, the available defenses, and the consequences of his pleas resulted in Reid entering Alford pleas that were not knowing, voluntary, and intelligent. Second, Reid argues that, had trial counsel adequately informed the court of Reid's social, medical, and psychiatric conditions, then the court would have conducted a more searching plea colloquy and, ultimately, would have discovered that his Alford pleas were not entered knowingly, voluntarily, and intelligently. On state habeas,

the Supreme Court of Virginia held that the claim had no merit.[13] This court finds the claim to be a repackaging of claims the court has already rejected, and it fares no better.

The court has found that Reid, in fact, understood the effect of his plea. The court has also concluded that the Supreme Court of Virginia could have concluded reasonably that a reasonable defendant in Reid's position would have entered an Alford plea rather than going to trial. Reid has demonstrated nothing that remotely changes those realities. He cannot show prejudice. Therefore, the court concludes that the Supreme Court of Virginia's adjudication of this claim was neither contrary to nor an unreasonable application of the governing Strickland-Hill test. Consequently, Reid is not entitled to habeas relief on the claim.

VII. CLAIM II

Reid contends that he did not enter his Alford pleas knowingly, voluntarily, and intelligently. Reid complains that the trial court (1) failed to inquire into his multiple medical and psychiatric conditions, and (2) did not inquire adequately into his understanding of the charges against him and the consequences of his Alford pleas. The court finds that Reid has procedurally defaulted the claim and that he has shown neither "cause and prejudice" nor a "miscarriage of justice" to excuse that default.

On state habeas, the Supreme Court of Virginia held that Reid had procedurally defaulted this claim pursuant to Slayton v. Parrigan, 215 Va. 27, 205 S.E.2d 680 (1974).[14] Slayton bars a petitioner from raising a claim in a state habeas proceeding if the petitioner could have raised that claim at trial or on direct appeal but did not. Id. at 30, 205 S.E.2d at 682. Slayton is an adequate

[13] Claim I(D) corresponds to Claim VII(C)(15) of Reid's state habeas petition.

[14] Claim II corresponds to Claim I of Reid's state habeas petition.

and independent state procedural rule. Wright v. Angelone, 151 F.3d 151, 159-60 (4th Cir. 1998). When a state court has expressly relied on an adequate and independent state procedural rule to deny relief on a claim, that adequate and independent state procedural rule also bars federal review unless the petitioner shows either cause and prejudice, or actual innocence. See Coleman v. Thompson, 501 U.S. 722, 750 (1991); Harris v. Reed, 489 U.S. 255, 262 (1989); Murray v. Carrier, 477 U.S. 478, 488 (1986). Reid claims that his trial and appellate counsel were ineffective because they failed to raise the claim that Reid did not enter his Alford pleas knowingly, voluntarily and intelligently. Reid asserts that this ineffective assistance constitutes "cause and prejudice" that excuses his default. Reid also claims that it would be a "miscarriage of justice" not to consider the claim because he is "actually innocent" and "actually innocent of the death penalty." He claims that his actual innocence is an additional reason to excuse his default. The court now turns to Reid's alleged "cause and prejudice" and "actual innocence".

A. Cause and Prejudice

To show cause a petitioner must demonstrate that there were "objective factors," external to his defense, that impeded him from raising his claim at an earlier stage. Carrier, 477 U.S. at 488. To demonstrate prejudice, a petitioner must show that the alleged constitutional violation worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional magnitude. Id. at 492. A valid non-defaulted ineffective assistance of counsel claim can constitute cause and prejudice and, thereby, excuse a procedural default. Edwards v. Carpenter, 529 U.S. 446, 451-52 (2000). For the reasons that follow, Reid has not established such a claim.

As stated, on habeas review the Supreme Court of Virginia addressed and rejected on the

merits Reid's ineffective assistance claims that his counsel failed to consider and advise him of the defense of voluntary intoxication; failed to consider and advise him of an insanity defense; failed to advise him of the consequences of an Alford plea; and failed to ensure that his Alford pleas were knowing, voluntary, and intelligent. Since this court has already concluded that the Supreme Court of Virginia's adjudication of those claims was neither contrary to nor involved an unreasonable application of clearly established federal law, Reid cannot now rely on those claims to excuse his procedural default. Yet, the ineffective assistance claims he currently asserts to excuse his procedural default–that trial and appellate counsel failed to raise and preserve his claim that his pleas were not knowingly, voluntarily and intelligently entered–does precisely that. It necessarily relies on the acceptance of one or more of the ineffective assistance claims this court has already rejected. Therefore, Reid has not made a showing of cause and prejudice sufficient to allow this court to address his procedurally defaulted claim.

B. Miscarriage of Justice

The court also rejects Reid's assertion that he falls within the "miscarriage of justice" exception to the procedural default rule. Under that exception in a capital case, a petitioner may show actual innocence to excuse a procedural default. A "claim of innocence is . . . not itself a constitutional claim, but instead a gateway claim through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits." Schulp v. Delo, 513 U.S. 298, 315 (1995) (internal quotation marks omitted). The claim "must be based on reliable evidence not presented at trial," Calderon v. Thompson, 523 U.S. 538, 559 (1998), and that evidence must demonstrate "that it is more likely than not that no reasonable juror would have convicted him" of the underlying offense. Schlup at 327. This standard applies, however, only

"to the extent a capital petitioner claims he did not kill the victim." Calderon, 523 U.S. at 560. "To the extent the capital petitioner contests the special circumstances rendering him eligible for the death penalty, [a] 'clear and convincing' standard applies, irrespective of whether the special circumstances are elements of the offense of capital murder or . . . mere sentencing enhancers." Id. Reid cannot show that he is actually innocent.

Under Virginia law, a defendant is eligible for the death penalty if he or she is found guilty of having committed a willful, deliberate, and premeditated killing in the commission of either an attempted robbery or attempted rape. See Va. Code § 18.2-31(4), (5). Reid argues that his intoxicated state coupled with his medical and psychiatric conditions made him unable to form the requisite level of intent necessary for capital murder. The court rejects Reid's "actual innocence" claims.

The evidence Reid relies on does not differ materially from the evidence Reid presented at sentencing. A claim of actual innocence "must be based on reliable evidence not presented at trial." Calderon at 559. More fundamentally, that evidence must demonstrate "that it is more likely than not that no reasonable juror would have convicted him." Schlup at 327. It is not possible under the facts of this case for Reid to demonstrate that it is more likely than not that no reasonable juror would have convicted him. Moreover, since the evidence clearly proves that Reid killed Annie Lester, to demonstrate that he is "actually innocent of the death penalty" Reid must establish clearly and convincingly that no reasonable judge or juror would have found him eligible for the death penalty. He has presented nothing that remotely discharges that burden. It follows he cannot show a "miscarriage of justice" that will relieve his procedural default.

VIII. CLAIM III

The Eighth Amendment, incorporated through the Fourteenth Amendment, "requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." Woodson v. North Carolina, 428 U.S. 280, 304 (1976). A sentencer may neither be precluded from considering any mitigating factors, Lockett v. Ohio, 438 U.S. 586, 604 (1978), nor refuse to consider any relevant mitigating evidence, Eddings v. Oklahoma, 455 U.S. 104, 113-14 (1982). Reid maintains that the trial court failed to consider mitigating evidence in violation of his Eighth Amendment right to a fair and reliable sentencing proceeding. According to Reid, the trial judge's statements at sentencing disclose that he failed to consider Reid's mitigating evidence. The Judge stated:

> Before a sentence of death can be imposed upon you, the Commonwealth must prove certain aggravating circumstances beyond a reasonable doubt. The Court has the duty to consider all such evidence, both favorable to you and unfavorable presented relative to this hearing in ascertaining whether the crime of which you have been convicted is so atrocious that the death sentence should be imposed. The Commonwealth has met her burden. Your conduct in the commission of this crime was outrageously vile, horrible and inhuman in that it involved such aggravated battery to the victim, that is, it [is] a battery which qualitatively and quantitatively is more culpable than the minimum necessary to accomplish an act of murder. . . . This Court therefore fixes your punishment under the indictment charging capital murder at death.

(Tr. at 402.) On direct appeal, the Supreme Court of Virginia quoted from that statement and concluded that, contrary to Reid's assertion, the trial court considered Reid's mitigating evidence. Reid v. Commonwealth, 256 Va. 561, 569, 506 S.E.2d 787, 792 (1998).

The Commonwealth maintains that the court may not consider Reid's constitutional claim because Reid failed to raise it in the Supreme Court of Virginia either on direct appeal or in state habeas review. Gray v. Netherland, 518 U.S. 152, 162 (1996) (stating that a federal habeas court

may not review a claim never presented to a state court). Instead, the Commonwealth notes, Reid claimed on direct appeal that the trial court failed to consider his mitigating evidence in violation of Virginia Code § 19.2-264.4. Reid responds that this court is permitted to review the claim on the merits because he "fairly presented" the constitutional claim to the Supreme Court of Virginia on direct appeal. See Anderson v. Harless, 459 U.S. 4, 6 (1982) (per curiam); Picard v. Connor, 404 U.S. 270, 275-78 (1971). The court has reviewed the record and concludes otherwise. Reid raised the claim as a state law claim. He did not fairly raise the claim as an eighth amendment claim. Thus, Reid defaulted the claim.

Reid contends that even if the claim is defaulted, he can meet the cause and prejudice and miscarriage of justice standards to excuse the default. The court disagrees. As cause for the default, Reid asserts that he was denied the effective assistance of counsel because trial counsel failed to object and preserve the constitutional issue for appeal and because appellate counsel failed to raise the constitutional issue on appeal.[15] Assuming, without deciding, that counsel's performance fell below an objective standard of reasonableness, the court nonetheless rejects Reid's argument because he cannot show a reasonable probability that, but for the alleged ineffective assistance, the result of the proceeding would have been different. The Supreme Court of Virginia rejected the premise of the argument that Reid now attempts to raise, finding instead that the trial court considered Reid's mitigating evidence. Having rejected the premise of Reid's state law claim that the trial judge failed to consider Reid's mitigating evidence, it would be unreasonable to conclude that the result of Reid's proceeding would have been different had

[15] The Supreme Court of Virginia rejected that ineffective assistance of counsel claim, finding that it had no merit.

counsel based their objection or appeal on a constitutional claim instead of on state law. Thus, the court concludes that Reid cannot satisfy the Strickland prejudice prong.

It follows that since this court has already determined that Reid cannot satisfy the actual innocence standard of the miscarriage of justice exception in order to excuse his procedural default, the court cannot review Claim III on the merits. Consequently, the court dismisses the claim.

X. CONCLUSION

In conclusion, the court finds that Reid is not in custody or sentenced to death in violation of the United States Constitution. Accordingly, the court denies his petition for writ of habeas corpus under 28 U.S.C. § 2254. An appropriate order will be entered this day.

ENTER: this September 23, 2002.

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CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JAMES EDWARD REID,)
)
) **Civil Action No. 7:00CV00859**

Petitioner,	)	
	)	
v.	)	**FINAL ORDER**
	)	
JOHN B. TAYLOR, Warden,	)	
Sussex I State Prison,	)	**By: Samuel G. Wilson**
	)	**Chief United States District Judge**
Respondent.	)	

In accordance with the written Memorandum Opinion entered this day, it is **ORDERED** and **ADJUDGED** that James Edward Reid's petition under 28 U.S.C. § 2254 for write of habeas corpus is **DENIED**. This action is stricken from the active docket of the court.

ENTER: This September 23, 2002.

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CHIEF UNITED STATES DISTRICT JUDGE